

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANET AVIGNE and
LAUREN MORGAN.,

Plaintiffs,

Case No. 22-cv-11889
Hon. Matthew F. Leitman

v.

THE KROGER CO.,

Defendant.

/

**ORDER GRANTING PLAINTIFFS LEAVE
TO FILE A FIRST AMENDED COMPLAINT**

On May 18, 2022, Plaintiffs Janet Avigne and Lauren Morgan filed this putative class action against Defendant The Kroger Co. (*See* Compl., ECF No. 1.) Plaintiffs allege that they were misled by the packaging of Kroger's Private Selection smoked gouda sliced cheese. (*See id.*)

On December 16, 2022, Kroger filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6). (*See* Mot. to Dismiss, ECF No. 7.) Kroger argues, among other things, that (1) Plaintiffs have failed to plead sufficient facts to state viable claims under the Supreme Court's decisions in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and (2) Plaintiffs' fraud claims are not pleaded with the particularity required by Federal Rule of Civil Procedure 9(b). (*See id.*, PageID.40, 45-50.)

Without expressing any view regarding the merits of the motion to dismiss, the Court will grant Plaintiffs the opportunity to file a First Amended Complaint in order to remedy the alleged deficiencies in their allegations identified by Kroger in the motion to dismiss. The Court does not anticipate allowing Plaintiffs another opportunity to amend to add factual allegations that they could now include in their First Amended Complaint. Simply put, this is Plaintiffs' opportunity to amend their allegations to cure the alleged deficiencies in their claims.

By **January 9, 2023**, Plaintiffs shall file a notice on the docket in this action notifying the Court and Kroger whether they will amend the Complaint. If Plaintiffs provide notice that they will be filing a First Amended Complaint, they shall file that amended pleading by no later than **January 24, 2023**. If Plaintiffs provide notice that they will not be filing a First Amended Complaint, they shall respond to the motion to dismiss by no later than **January 24, 2023**.

Finally, if Plaintiffs provide notice that they will be filing a First Amended Complaint, the Court will terminate without prejudice Kroger's currently-pending motion to dismiss as moot. Kroger may re-file a motion to dismiss directed at the First Amended Complaint if Kroger believes that such a motion is appropriate after reviewing that pleading. **IT IS SO ORDERED.**

Dated: December 20, 2022

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 20, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan

Case Manager

(313) 234-5126